Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
1993 Annual Access Tariff Filings	)	**CC Docket No. 93-193**
1994 Annual Access Tariff Filings	)	**CC Docket No. 94-65**

RECALCULATION AND REFUND PLAN OF THE SPRINT INCUMBENT LOCAL EXCHANGE COMPANIES

The Sprint Incumbent Local Exchange Companies[1] respectfully file their Recalculation and Refund Plan pursuant to the Commission's July 30, 2004 Order in the 1993-1994 Annual Access Tariff Filing dockets.[2]

I. INTRODUCTION

In the *Order*, the Commission found unjust and unreasonable the 1993 and 1994 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 and 1993 PCIs and failed to apply add-back in computing,

[1] This Recalculation and Refund Plan ("Plan") is filed on behalf of those Sprint Incumbent Local Exchange Companies (hereinafter "Sprint") that implemented a sharing or lower formula adjustment and failed to apply add-back in their 1993 and 1994 access tariff filings. Those companies, by tariff filing entity, are: Sprint-Florida, Inc.; United Telephone Company of Ohio; United Telephone Company of Indiana, Inc. Sprint Local Telephone Companies – Eastern; Sprint Local Telephone Companies – Southeast; Sprint/United Telephone Companies – Midwest; and Sprint Local Telephone Companies – Northwest. Other Sprint Incumbent Local Exchange Companies are not implicated or impacted and are not part of this Plan.

[2] *In the Matter of 1993 Annual Access Tariff Filings*, CC Docket No. 93-193 and *1994 Annual Access Tariff Filings*, CC Docket No. 94-65, *Order*, FCC 04-151, released July 30, 2004 ("*Order*").

respectively, their 1992 and 1993 earnings and rates of return and resulting 1993 and 1994 PCIs. The Commission ordered such LECs to:

> (a) recalculate their 1992 and 1993 earnings and rates of return making such an adjustment;
> (b) determine the appropriate sharing of lower formula adjustment to their PCIs for the subsequent tariff year;
> (c) compute the amount of any resulting access rate decrease; and
> (d) submit a plan for refunding the amounts owed to customers plus interest as a response to this order, ...[3]

In Part II below, Sprint explains the recalculation and adjustments required by (a) through (c) above. The detailed calculations for these recalculations and adjustments are set forth Exhibits I through VII, attached hereto and incorporated herein, all as more fully explained below. Exhibits I through VII – a separate exhibit for each of the seven Sprint Local Telephone Company filing entities -- are identical in format and structure. For the sake of convenience, Sprint will hereinafter refer to Exhibit I, but such reference shall apply equally to Exhibits II through VII. Additionally, the access rate decreases that would have been implemented in 1993 and 1994 because of the add-back are set forth on Exhibits A (without interest) and B (with interest). Sprint's refund plan, as required by (d) above, is explained in Part III below.

II. RECALCULATIONS AND ADJUSTMENTS

To recalculate earnings and rates of return with the add-back adjustment, Sprint began with the information originally reported on Form 492. The first and final Form 492 report for the 1991, 1992, and 1993 reporting periods are shown on, respectively, pages 2, 3, and 7 of Exhibit I. The original Form 492 reports are restated for each period

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[3] Id. at para. 29.

showing add-back on Exhibit I, page 4 for the first 1992 Form 492 submission and on Exhibit I, page 5 for the final submission. Both are then restated on Exhibit I, page 6 for the first and final submission of the 1992 Form 492 with add-back. The restated 1992 overearnings and rate of return are summarized on Exhibit I, page 6.

The original 1993 Form 492 report for 1993 is restated with add-back on Exhibit I, page 8 and on Exhibit I, page 9 for the final 1993 Form 492 report. Both are then restated on Exhibit I, page 10 for the first and final submission of 1993 with add-back. The 1993 restated overearnings and rate of return are summarized on Exhibit I, page 10.

The impact on sharing of the restated earnings and rates of return was determined by identifying the sharing amounts to be used in developing new price cap indices ("PCIs") for the filing years 1993 and 1994 as shown on Exhibit I, page 11. Exhibit I, page 12 displays the 1993 PCI development as originally filed. Exhibit I, page 13 recalculates the 1993 PCI with the add-back. The 1993 access rate decrease is calculated on Exhibit I, page 14 using the original 1993 filing from Exhibit I, page 12 and recalculated filing on Exhibit I, page 13 and then comparing the originally filed actual price indices ("API") to the restated PCI with add-back.

Exhibit I, page 16 provides the recalculation of the 1994 PCI reflecting add-back. The 1994 access rate decrease is calculated on Exhibit I, page 17 by using the original 1994 filing from Exhibit I, page 15 and the recalculated filing on Exhibit I, page 16 and then comparing the originally filed API to the restated PCI with add-back.

Carrier Common Line calculations reflecting the impact of the PCI change, including "little g," are displayed on Exhibit I, page 18 for 1993 and Exhibit I, page 19 for 1994. Exhibit I, page 20 reflects the changes in service baskets that occurred with the

March 7, 1994 local transport restructure. Finally, access rate reduction by basket for 1993, before and after local transport restructure, and 1994 is reflected on Exhibit I, page 1.

The recalculations have been made taking into account "headroom" -- the amount by which each Sprint tariff filing entity's APIs were lower than its PCIs. This is appropriate because under the price cap regime the fact that a carrier's PCI must be restated downward does not necessarily mean that the carrier's rates were too high or that, upon a determination of unlawfulness, any refund is necessarily due or, if due, corresponds exactly with the restated PCI. PCIs for each price cap basket set an upper limit on a carrier's rates, which are measured by the APIs. Generally, a carrier has the discretion to set rates below the PCI. When it does so and its APIs are lower than the PCIs, the carrier has "headroom" to justify that higher rates could have been filed and charges based on those rates could have been billed, but were not.

The Commission's decision that the 1993 and 1994 annual access tariffs were unreasonable and unlawful means that the impacted carriers' PCIs were too high. It does not necessarily mean that rates were too high or that a refund is due. That determination can only be made by taking into account "headroom" and comparing the APIs with the restated PCIs.

III. REFUND WITH INTEREST

The refund amounts have been calculated with interest (see Exhibit B). Had the Sprint ILECs reflected add-back in their rates for tariff years 1993 and 1994, the benefit of the lower rates would have accrued to their customers ratably throughout that two-year timeframe. Accordingly, in calculating the refund with interest, the principal amount of the refund was assumed to grow ratably on a daily basis from the first day of the two-year period until the end of the two-year period. The interest was computed and compounded on a daily basis throughout the two-year period and thereafter based on applying the interest rate to the amount of the refund. For illustrative purposes, the interest reflected on the Exhibits is calculated through December 31, 2004. Actual refunds will be paid with interest calculated through the date of payment.

The interest rate is the IRS rate for large corporate overpayments [26 U.S.C. § 6621(a)(1)(B)]. Sprint believes this is the appropriate rate, as opposed to the higher rates for individual overpayments or for underpayments. First, the refunds are owed to businesses, not individuals. And the vast majority of the dollars to be refunded is in amounts that greatly exceed $10,000 and are due to a very few, very large corporations – some of the largest corporations in the United States.

Further, use of the large corporate overpayment rate is consistent with past Commission precedent in cases such as this. In the *Number Portability Refund Order* [4]

[4] *In the Matter of Long-Term Telephone Number Portability Tariff Filings of Ameritech Operating Companies, Pacific Bell, Southwestern Bell Telephone Companies, and US West Communications, Inc.*, 14 FCC Rcd 17339 (1999).

the Commission determined that the individual (refunds were due individuals) overpayment rate, not the underpayment rate, was appropriate.

> Here we follow the reasoning of the *Western Union MO&O* and allow carriers to utilize the IRS individual overpayment rate. We do not wish to penalize the carriers involved, as they filed their tariffs in good faith and are refunding money charged in excess of those rates the Commission prescribed.[5]

Likewise, in the instant case, Sprint's tariffs were filed in good faith. At the time of filing there was no explicit rule requiring add-back. In fact, it was only well after the filing of the tariffs in question that the Commission deemed it necessary to adopt an explicit rule requiring add-back on a prospective basis.[6] Carriers should not be penalized for not following a rule that had not yet been adopted.

Further evidence of Sprint's good faith filing is demonstrated, as Sprint pointed out in its Reply Comments in this proceeding,[7] by the fact that Sprint took no add-back adjustment in situations where it underearned. This occurred with Carolina Telephone and Telegraph in 1992 and utilizing an add-back would have been beneficial to Sprint.

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[5] Id., at 17341.

[6] *In the Matter of Price Cap Regulation of Local Exchange Carriers Rate-of-Return Sharing and Lower Formula Adjustment*, 10 FCC Rcd 5656 (1995).

[7] Reply Comments of Sprint Corporation, filed May 19, 2003, at p. 2.

However, in the absence of a rule requiring add-back Sprint determined, to its detriment for that entity, that no add-back could be applied.

Accordingly, given Commission precedent and the equitable factors discussed above, Sprint believes the IRS rate for large corporate overpayments should be used as the appropriate interest rate for the refund calculations in this case.

Once Sprint's refund plan is approved, Sprint will implement the refund plan by notifying all customers to whom a refund (principal and interest) of $1,000 or more is owed. Sprint will inform these customers of the refund amount Sprint believes applicable and of any defenses, such as Settlements and Releases that preclude recovery by the customer, or past due, undisputed access bills that Sprint believes it is entitled to offset against the refund. The customer will be directed to submit a claim within thirty (30) days of the date of the letter. Upon agreement, Sprint will issue the customer a credit for the full amount including interest through the date of the credit. In the event the customer is no longer a customer of Sprint's, Sprint will issue the customer a check.

Due to the unusually long period of time that this proceeding remained pending before the Commission, it is likely that some customers no longer exist or will be difficult to find. It has been between ten and eleven years since these access charges were incurred and given the instability in American business during that time period it is highly likely that some of the customers, including carriers, no longer exist. Or, many may have gone through changes – corporate restructuring, ownership restructuring, bankruptcy, name changes, location changes – that will make it difficult for Sprint to track them down. Accordingly, Sprint will also establish a window of sixty (60) days from the date of approval of the refund plan to receive claims from any party that

believes it is entitled to a refund. Upon proof of claim and substantiation that the claimant is legally entitled to the refund as the customer or successor-in-interest, Sprint will issue, subject to any defenses such as Settlements and Releases or outstanding, undisputed access bills, the refund with interest. In the event the customer is still a customer of Sprint, the refund will be made as a credit.

Of the approximately 760 customers entitled to a refund, 682 are entitled to less than $1,000 with interest included. This represents almost 90 % of the customers involved, but a mere .29 % of the total dollar amount to be refunded. The average refund for these customers is just $ 60 with interest included. As noted above, given the substantial amount of time that has passed since the charges were incurred it is likely that many of these customers are out of business or, if still in business, are no longer so at the same address or in the same form as ten and eleven years ago. And, since most of these customers were not carrier-customers it is far more likely that the entity is no longer a customer of Sprint's than with the customers entitled to refunds in excess of $1,000, many of which are carriers. Locating these customers will, for the most part be extremely burdensome and, given the small amounts involved, far more burdensome to Sprint than beneficial to the customer or former customer.

Given the passage of such a substantial amount of time, the small commercial benefit to these customers, and the heavy administrative burden to Sprint in finding these customers and refunding these small amounts, Sprint does not believe it should be obligated to seek these customers out and notify them of the refund opportunity.

However, Sprint will provide the same sixty (60) day window described above to receive and substantiate any claims. Upon substantiation of the claim, a refund will be made.

Respectfully submitted,

SPRINT CORPORATION

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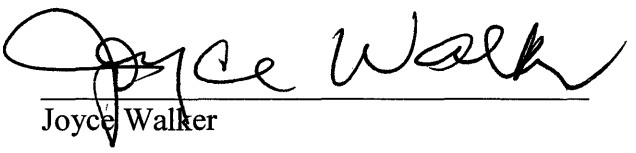
August 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Recalculation and Refund Plan of the Sprint Incumbent Local Exchange Companies, filed by the Sprint Incumbent Local Exchange Companies in CC Docket Nos. 93-193 and 94-65 was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 30th day of August 2004 as follows:



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